

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. NO.: 05-10823RWZ

PHILLIP MAROTTA,
Plaintiff

V.

MI-JACK PRODUCTS, INC.,
FANTUZZI REGGIANE, FANTUZZI USA, INC.,
AND MASSACHUSETTS PORT AUTHORITY,
Defendants

**PLAINTIFF'S MOTION TO STAY PROCEEDINGS TO AFFORD AN
OPPORTUNITY FOR THE PHILLIP MAROTTA CASE WHICH IS
CONCURRENTLY FILED IN SUFFOLK SUPERIOR COURT TO BE
CONSOLIDATED WITH THE JAMES WHITLEY AND JAMES KEHOE CASE
AND PROCESSED IN ITS ENTIRETY AS A CONSOLIDATED CASE IN
SUFFOLK SUPERIOR COURT**

Now comes the Plaintiff, Phillip Marotta who is a resident of the State of Maine and enjoys diversity of jurisdiction against all four party defendants. Phillip Marotta's instant lawsuit is rightfully filed in this Honorable Court.

In the case of James Kehoe v. MI-Jack Products, Inc., Fantuzzi Reggiane, Fantuzzi USA, Inc. United States District Court District of Massachusetts C.A. No.: 04 10232WGY a new viable defendant, Massachusetts Port Authority has been discovered. The addition of Massachusetts Port authority in the James Kehoe Federal Court Action will destroy diversity of jurisdiction. Accordingly, a

motion has been simultaneously filed before Judge Young to transfer James Kehoe's case to Suffolk Superior Court. The caption in that case and the parties in that case will be identical to the Phillip Marotta action being James Kehoe v. MI-Jack Products, Inc., Fantuzzi Reggiane, Fantuzzi USA, Inc. and Massachusetts Port Authority. A concurrent lawsuit has been instituted in Suffolk Superior Court for James Kehoe, Plaintiff v. MI-Jack Products, Inc., Fantuzzi Reggiane, Fantuzzi USA, Inc. and Massachusetts Port Authority, Defendants. A third companion case has recently been obtained by this office which once again will be against the exact same defendants. This case is James Whitley v. MI-Jack Products, Inc., Fantuzzi Reggiane, Fantuzzi USA, Inc. and Massachusetts Port Authority.

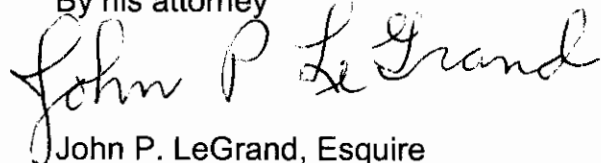
The Suffolk Superior Court Tracking Orders for the three cases, Phillip Marotta, James Whitley and James Kehoe are attached hereto and are almost identical in Suffolk Superior Court. James Whitley, Phillip Marotta and James Kehoe each fell off the same exact type of MI-Jack Fantuzzi Container Handler on the same defects on different dates. Each plaintiff was descending the ladder from the operator's cab and as they went to put their foot on the bottom step bending their leg around a defective design in the step second from the bottom. Their foot slid off the bottom step causing James Kehoe a knee injury with surgical correction causing Phillip Marotta a knee injury with surgical correction and causing James Whitley a foot injury with recommended surgical correction.

It is the plaintiff counsel's objective through this motion to stay the proceedings in the instant Federal Court Case and allow all three cases to be consolidated in Suffolk Superior Court for processing as all of the claims, parties and witnesses in the claims are identical. MI-Jack's Person with the Best Knowledge of the defect plaintiff alleges is in Illinois and would be the same person who would be deposed for either one or all three of these cases. The Person with the Best Knowledge from Fantuzzi Reggiane and Fantuzzi USA, Inc. is located in Illinois and would be the same person who would be deposed to give deposition testimony about each or all three of the instant actions. All of the Massachusetts Port Authority deponents would be the same Massachusetts Port Authority deponents who would be deposed in one or all three of the Marotta, Whitley and Kehoe cases ultimately being sought to be consolidated herein.

Accordingly, plaintiff hereby moves this Honorable Court to Stay the Proceedings in the Action of Phillip Marotta, Plaintiff V. MI-Jack Products, Inc., Fantuzzi Reggiane, Fantuzzi USA, Inc., and Massachusetts Port Authority to allow the concurrently filed claim presently pending in Suffolk Superior Court to be processed in a consolidated fashion together with the cases of James Kehoe and James Whitley cases against the identical defendants arising out of the identical set of facts and the identical defects as those on the Phillip Marotta case.

Respectfully Submitted

By his attorney

A handwritten signature in black ink that reads "John P. LeGrand". The signature is written in a cursive style with a large, stylized "J" and "L".

John P. LeGrand, Esquire

John P. LeGrand & Associates, P.C.

375 Broadway, Suite 2

Somerville, MA 02145

617-623-3001

BBO #: 550185

Dated: August 22, 2005

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JAMES KEHOE,
Plaintiff

C.A. NO: 04-10232NMG

V.

MI-JACK PRODUCTS, INC.,
FANTUZZI REGGIANE AND
FANTUZZI USA, INC.,
Defendants

AND

PHILLIP MAROTTA,
Plaintiff

C.A. NO: 05-10823RWZ

V.

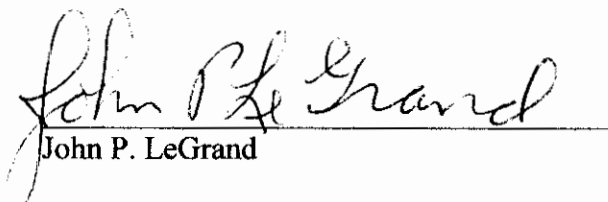
MI-JACK PRODUCTS, INC.,
FANTUZZI REGGIANE AND
FANTUZZI USA, INC.,
Defendants

**AFFIDAVIT OF ATTORNEY JOHN P. LEGRAND PURSUANT
TO LOCAL RULE 7.2**

1. I am Attorney John P. LeGrand of John P. LeGrand and Associates, P.C. and am counsel on behalf of the above-captioned plaintiffs.
2. I have conferred with all defense counsels relative to the Motion to Stay Proceedings on the Phillip Marotta case, the Motion to Transfer the James Kehoe case and the Motion to Consolidate the James Kehoe, Phillip Marotta and James Whitley cases.

3. Attorney Christopher W. Costello has assented to each of the above-referenced motions on behalf of Fantuzzi USA, Inc and Fantuzzi Reggiane.
4. Attorney James P. Donohue, Jr. is seeking assent from his principle. James P. Donohue, Jr., Esquire anticipates being in a position to give his assent to the above-referenced motions, but must inquire for authority from his principles.
5. Attorneys Christopher A. Kenney and Anthony L. DeProspo, Jr. anticipate having assent available at the Status Conference scheduled for Wednesday, August 24, 2005 at 2:30 p.m. before the Honorable Rya W. Zobel, but at this time must seek authority from their client.

SIGNED AND SWORN TO UNDER THE PAINS AND PENALTIES OF PERJURY
THIS 23^d DAY OF AUGUST, 2005.


John P. LeGrand

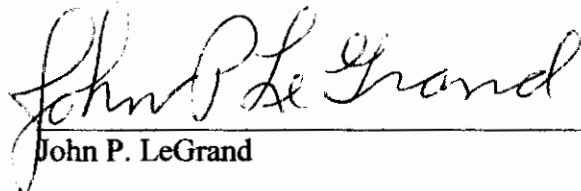
CERTIFICATE OF SERVICE

I, John P. LeGrand, Esquire, attorney for the plaintiff(s), hereby certify that I have served a copy of the within pleading on all parties of record, in hand, on August 23, 2005 to:

James P. Donohue, Jr., Esquire
SLOANE & WALSH
Three Center Plaza
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Mark B. Lavoie, Esquire
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Christopher A. Kenney, Esquire
Anthony L. DeProspo, Jr., Esquire
SHERIN AND LODGEN, LLP
101 Federal Street
Boston, MA 02110


John P. LeGrand

LIST OF EXHIBITS

1. Kehoe Suffolk Superior Court Tracking Order
2. Kehoe Suffolk Superior Court Complaint
3. Kehoe Federal Court Complaint
4. Kehoe Amended Federal Court Complaint
5. Marotta Suffolk Superior Court Tracking Order
6. Marotta Suffolk Superior Court Complaint
7. Marotta Federal Court Complaint
8. Whitley Suffolk Superior Court Tracking Order
9. Whitley Suffolk Superior Court Complaint
10. Kehoe Federal Court Motion to Transfer
11. Kehoe, Marotta and Whitley Suffolk Superior Court Motion to Consolidate
12. Photograph of defect which caused all three (3) Plaintiff's accidents
13. Photograph of defect which caused all three (3) Plaintiff's accidents
14. Photograph of defect which caused all three (3) Plaintiff's accidents